IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 18706 of 2006(S)

OA.666/2005 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:
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1. THE CHIEF PERSONNEL OFFICER,
   SOUTHERN RAILWAY, HEADQUARTERS,
   PARK TOWN, CHENNAI-600 003.

2. THE CHIEF ADMINISTRATIVE OFFICER,
   CONSTRUCTION, SOUTHERN RAILWAY,
   EGMORE, CHENNAI-600 008.

3. THE EXECUTIVE ELECTRICAL ENGINEER,
   CONSTRUCTION, SOUTHERN RAILWAY,
   ERNAKULAM SOUTH, KOCHI-682 016.

4. UNION OF INDIA REPRESENTED BY
   THE GENERAL MANAGER, SOUTHERN RAILWAY,
   PARK TOWN, CHENNAI-600 003.

BY ADV. SRI.T.P.M.IBRAHIM KHAN,SR.SC, RAILWAYS

RESPONDENTS:
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1. K.N.SUBRAMANIAN, S/O.SHRI. K.A.NARAYANAN,
   SENIOR SECTION ENGINEER,
   ELECTRICAL CONSTRUCTION, SOUTHERN RAILWAY,
   ERNAKULAM SOUTH, KOCHI-682 016.

2. THE CENTRAL ADMINISTRATIVE TRIBUNAL,
   ERNAKULAM BENCH, KOCHI-682 017.

R1 BY ADV. SRI.P.K.MADHUSOODANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.18706/2006 - APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 - TRUE COPY OF ORIGINAL APPLICATION NO.666/2005 ALOANGWITH ITS ANNEXURE FILED BY THE FIRST RESPONDENT/APPLICANT BEFORE THE SECOND RESPONDENT/CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH.

EXT.P2 - TRUE COPY OF REPLY STATEMENT FILED BY THE PETITIONERS/ RESPONDENT IN ORIGINAL APPLICATION NO.666/2005 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P3 - TRUE COPY OF ORDER DATED 28.4.2006 PASSED BY THE LEARNED CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKUKLAM BENCH IN EXT.P1 ORIGINAL APPLICATION NO.666 OF 2005.

EXT.P4 - TRUE COPY OF LETTER NO.P(S)11/VII/Elec/GS DATED 2.9.2005 ISSUED BY THE FIRST PETITIONER TO THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS:

EXT.R1(a)- TRUE COY OF REJOINDER DATED 10.10.2005 IN O.A.NO.666/2005 FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

(TRUE COPY)

PS TO JUDGE

vaa

J.B. KOSHY and T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) No. 18706 of 2006 S

Dated this the 21st day of March, 2007

Judgment

Koshy, J.

Petitioner Railway challenges the order of the second respondent Central Administrative Tribunal. First respondent filed an O.A. praying for grant of special voluntary retirement scheme. As per the scheme, it can be granted only when alternative suitable employment is not available with the employer. First respondent (applicant before the tribunal) had 29 years of service to his credit in the railway. In 2001, due to some growth in the spinal cord, both of his legs were paralysed and had loco motor disability and medically unfit for the post of Senior Section Engineer in which post he was working. He was medically decategorised by the certificate issued as can be seen from Annexure A1. Thereafter, petitioner was asked to work in a supernumerary post as alternative employment was not available. Annexure A2 shows that since the respondent was medically decategorised and medically unfitted, he

was utilised to look after the store and office work. He was working in that supernumerary post from 8.11.2002 as the Railway was not able to find out a supernumerary post. Even though respondent has fulfilled the conditions in Annexure A3 for VRS scheme, he was not granted the above benefit on the ground that an alternative post was available.

2. According to the Railway, he can be posted as SSE/Drawing and it ordered to post him at TVC Division, but, in Annexure A1, it is specifically stated that he is medically unfit for duty. Department itself suggested him to apply for VRS Scheme by Annexure A2 which reads as follows:

> "Shri K.N. Subramanian, SSE/CN/ERS who has been medically decategorised may be counselledl and asked to give his option for special Voluntary Retirement Scheme for Surplus Railway Employees, which has been issued under Board's letter No.E(D & A)1-2002/RT-1 dated 04-08-2004 as PBC No.153/2004 (copy enclosed).
>
> Encl: Railway Board's letter referred above."

Therefore, posting in TVC Division as SSE in the place of supernumerary post was not correct. Tribunal also found that the said post of SSE is a post requiring highly technical knowledge and the respondent who is an inexperienced person in that job will not be able to work in that post and he is not having the minimum educational qualification required for the post of Section Engineer. To hold that post degree in Engineering is necessary. He has passed only SSLC. Taking into account the medical disability and also the fact that he was working in the supernumerary post for three years and also considering the fact that he is physically and educationally unfit to hold the post of SSE at TVC Division, the Tribunal found that his case for voluntary retirement ought to have been accepted as he applied in time. Admittedly, before his option for VRS Scheme, he was working as supernumerary from 2002 onwards as no alternative post was available to him because of his physical disability as certified by the Medical officer of the Railway. On the facts and circumstances of the case, we see no ground to interfere in the same. There is no perverse finding or illegality so as to attract the

jurisdiction under article 227 of the Constitution of India. The writ petition is dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

vaa

J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) No.18706/2006 S

Judgment

Dated:21st March, 2007